

E-Filed on: 10/10/2008

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

J & J SPORTS PRODUCTIONS, INC.,

Plaintiff,

v.

ISRAEL VALENCIA GARCIA, individually
and dba LA COPA,

Defendant.

No. C-08-00990 RMW

ORDER GRANTING MOTION TO SET
ASIDE DEFAULT AND DENYING MOTION
FOR DEFAULT JUDGMENT

[Re Docket Nos. 10, 17]

The defendant Israel Valencia Garcia lives in Texas. Garcia Decl. ¶ 4. He states that he was served with the summons and complaint in this action on May 28, 2008. *Id.* ¶ 2. He asked his brother (who lives in California) to search for an attorney, and he retained counsel on June 30. *Id.* ¶¶ 4, 5. His attorney filed an answer that day. *See* Docket No. 14. However, the plaintiff, J & J Sports Productions, Inc., had moved for default on June 18 (the day after Mr. Garcia's answer was due) and the clerk entered default on June 20. Docket Nos. 7, 8.

Mr. Garcia now moves to set aside the default. The court may set aside an entry of default "for good cause." Fed. R. Civ. P. 55(c). Here, Mr. Garcia missed the deadline for filing his answer by less than two weeks, having had to retain counsel from more than a thousand miles from this

1 court. Upon retaining counsel, he diligently filed his answer. Furthermore, J & J has filed no
2 opposition to the motion to set aside the default.

3 The court deems these motions appropriate to decide without oral arguments. Civ. L.R. 7-
4 1(b). Accordingly, the court grants the motion to set aside the default. As Mr. Garcia is no longer in
5 default, the court denies J & J's motion for default judgment. The court schedules an initial case
6 management conference for October 17 at 10:30.

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9 DATED: 10/10/2008



RONALD M. WHYTE
United States District Judge

United States District Court
For the Northern District of California

1 **Notice of this document has been sent to:**

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7 Counsel are responsible for distributing copies of this document to co-counsel that have not
8 registered for e-filing under the court's CM/ECF program.

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11 **Dated:** 10/10/2008

TSF
Chambers of Judge Whyte